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HOUSE BILL 903

**47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005**

INTRODUCED BY

Joseph Cervantes

AN ACT

RELATING TO PUBLIC UTILITIES; PROVIDING FOR SIMULTANEOUS  
DETERMINATION OF RATEMAKING PRINCIPLES AND PUBLIC CONVENIENCE  
AND NECESSITY; AUTHORIZING UTILITIES TO FILE APPLICATIONS OF  
PUBLIC CONVENIENCE AND NECESSITY BEFORE FILING APPLICATIONS FOR  
LOCATION APPROVAL; ESTABLISHING FACTORS TO BE CONSIDERED WHEN  
APPROVING APPLICATIONS FOR LOCATION APPROVAL; PROVIDING  
DEADLINES FOR APPROVAL OF APPLICATIONS; ALLOWING APPROVAL OF  
APPLICATIONS WITHOUT A FORMAL HEARING; PRESCRIBING USE OF  
RATEMAKING PRINCIPLES AND TREATMENTS IN ALL PROCEEDINGS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 62-9-1 NMSA 1978 (being Laws 1941,  
Chapter 84, Section 46, as amended) is amended to read:

"62-9-1. NEW CONSTRUCTION--RATEMAKING PRINCIPLES.--

A. No public utility shall begin the construction

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1 or operation of any public utility plant or system or of any  
2 extension of any plant or system without first obtaining from  
3 the commission a certificate that public convenience and  
4 necessity require or will require such construction or  
5 operation. This section does not require a public utility to  
6 secure a certificate for an extension within any municipality  
7 or district within which it lawfully commenced operations  
8 before June 13, 1941 or for an extension within or to territory  
9 already served by it, necessary in the ordinary course of its  
10 business, or for an extension into territory contiguous to that  
11 already occupied by it and that is not receiving similar  
12 service from another utility. If any public utility or mutual  
13 domestic water consumer association in constructing or  
14 extending its line, plant or system unreasonably interferes or  
15 is about to unreasonably interfere with the service or system  
16 of any other public utility or mutual domestic water consumer  
17 association rendering the same type of service, the commission,  
18 on complaint of the public utility or mutual domestic water  
19 consumer association claiming to be injuriously affected, may,  
20 upon and pursuant to the applicable procedure provided in  
21 Chapter 62, Article 10 NMSA 1978, and after giving due regard  
22 to public convenience and necessity, including reasonable  
23 service agreements between the utilities, make an order and  
24 prescribe just and reasonable terms and conditions in harmony  
25 with the Public Utility Act to provide for the construction,

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1 development and extension, without unnecessary duplication and  
2 economic waste.

3 B. If a certificate of public convenience and  
4 necessity is required pursuant to this section for the  
5 construction or extension of a generating plant or transmission  
6 lines and associated facilities, a public utility may include  
7 in the application for the certificate a request that the  
8 commission determine the ratemaking principles and treatment  
9 that will be applicable for the facilities that are the subject  
10 of the application for the certificate. If such a request is  
11 made, the commission shall, in the order granting the  
12 certificate, set forth the ratemaking principles and treatment  
13 that will be applicable to the public utility's stake in the  
14 certified facilities in all ratemaking proceedings on and after  
15 such time as the facilities are placed in service. The  
16 commission shall use the ratemaking principles and treatment  
17 specified in the order in all proceedings in which the cost of  
18 the public utility's stake in the certified facilities is  
19 considered. If the commission later decertifies the  
20 facilities, the commission shall apply the ratemaking  
21 principles and treatment specified in the original  
22 certification order to the costs associated with the facilities  
23 that were incurred by the public utility prior to  
24 decertification.

25 C. The commission may approve the application for

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1 the certificate without a formal hearing if no protest is filed  
2 within sixty days of the date that notice is given that the  
3 application has been filed. The commission shall issue its  
4 order granting or denying the application within nine months  
5 from the date the application is filed with the commission.  
6 Failure to issue its order within nine months is deemed to be  
7 approval and final disposition of the application; provided,  
8 however, that the commission may extend the time for granting  
9 approval for an additional six months for good cause shown.

10 [B-] D. As used in this section, "mutual domestic  
11 water consumer association" means an association created and  
12 organized pursuant to the provisions of:

13 (1) Laws 1947, Chapter 206; Laws 1949, Chapter  
14 79; or Laws 1951, Chapter 52; or

15 (2) the Sanitary Projects Act."

16 Section 2. Section 62-9-3 NMSA 1978 (being Laws 1971,  
17 Chapter 248, Section 1, as amended) is amended to read:

18 "62-9-3. LOCATION CONTROL--LIMITATIONS.--

19 A. The legislature finds that it is in the public  
20 interest to consider any adverse effect upon the environment  
21 and upon the quality of life of the people of the state that  
22 may occur due to plants, facilities and transmission lines  
23 needed to supply present and future electrical services. It is  
24 recognized that such plants, lines and facilities will be  
25 needed to meet growing demands for electric services and cannot

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1 be built without in some way affecting the physical environment  
2 where these plants, facilities and transmission lines are  
3 located. The legislature therefore declares that it is the  
4 purpose of this section to provide for the supervision and  
5 control by the commission of the location within this state of  
6 new plants, facilities and transmission lines for the  
7 generation and transmission of electricity for sale to the  
8 public.

9 B. No person, including any municipality, shall  
10 begin the construction of any plant designed for or capable of  
11 operation at a capacity of three hundred thousand kilowatts or  
12 more for the generation of electricity for sale to the public  
13 within or without this state, whether or not owned or operated  
14 by a person that is a public utility subject to regulation by  
15 the commission, or of transmission lines in connection with  
16 such a plant, on a location within this state unless the  
17 location has been approved by the commission. For the purposes  
18 of this section, "transmission line" means any electric  
19 transmission line and associated facilities designed for or  
20 capable of operations at a nominal voltage of two hundred  
21 thirty kilovolts or more, to be constructed in connection with  
22 and to transmit electricity from a new plant for which approval  
23 is required.

24 C. Application for approval shall contain all  
25 information required by the commission to make its

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1 determination, be made in writing setting forth the facts  
2 involved and be filed with the commission. The commission  
3 shall, after a public hearing and upon notice as the  
4 commission may prescribe, act upon the application. The  
5 commission may condition its approval upon a demonstration by  
6 the applicant that it has received all necessary air and  
7 water quality permits. A public utility regulated by the  
8 commission may submit an application pursuant to Section  
9 62-9-1 NMSA 1978 for a certificate of public convenience and  
10 necessity prior to filing an application for location  
11 approval pursuant to this section in order to determine the  
12 need for the generating plant or transmission line prior to  
13 determination of the appropriate location.

14 D. No approval shall be required [~~for~~  
15 ~~construction in progress on the effective date of this~~  
16 ~~section or~~] for additions to or modifications of an existing  
17 plant or transmission line.

18 E. The commission shall approve the application  
19 for the location of the generating plant unless the  
20 commission finds that the operations of the facilities for  
21 which approval is sought will not be in compliance with all  
22 applicable air and water pollution control standards and  
23 regulations existing. The commission shall not require  
24 compliance with performance standards other than those  
25 established by the agency of this state having jurisdiction

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1 over a particular pollution source.

2 F. The commission shall approve the application  
3 for the location of the transmission lines unless the  
4 commission finds that the location will unduly impair  
5 important environmental values.

6 G. No application shall be approved pursuant to  
7 this section [~~which~~] that violates an existing state, county  
8 or municipal land use statutory or administrative regulation  
9 unless the commission finds that the regulation is  
10 unreasonably restrictive and compliance with the regulation  
11 is not in the interest of the public convenience and  
12 necessity, in which event and to the extent found by the  
13 commission the regulation shall be inapplicable and void as  
14 to the siting. When it becomes apparent to the commission  
15 that an issue exists with respect to whether a regulation is  
16 unreasonably restrictive and compliance with the regulation  
17 is not in the interest of public convenience and necessity,  
18 it shall promptly serve notice of that fact by certified mail  
19 upon the agency, board or commission having jurisdiction for  
20 land use of the area affected and shall make the agency,  
21 board or commission a party to the proceedings upon its  
22 request and shall give it an opportunity to respond to the  
23 issue. The judgment of the commission shall be conclusive on  
24 all questions of siting, land use, aesthetics and any other  
25 state or local requirements affecting the siting.

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1           H. A public utility subject to the jurisdiction  
2 of the commission may elect to file an application pursuant  
3 to this section with the commission for location approval for  
4 construction, extension, rebuilding or improvement of  
5 transmission lines and associated facilities with an  
6 operating voltage of forty-six kilovolts or more.

7           [~~H.~~] I. Nothing in this section shall be deemed  
8 to confer upon the commission power or jurisdiction to  
9 regulate or supervise any person, including a municipality,  
10 that is not otherwise a public utility regulated and  
11 supervised by the commission, with respect to its rates and  
12 service and with respect to its securities, nor shall any  
13 other provision of the Public Utility Act be applicable with  
14 respect to such a person, including a municipality.

15           [~~H.~~] J. The commission may approve an application  
16 filed pursuant to this section without a formal hearing if no  
17 protest is filed within sixty days of the date that notice is  
18 given that the application has been filed. The commission  
19 shall issue its order granting or denying the application  
20 within six months from the date the application is filed with  
21 the commission; provided, however, that:

22                   (1) if a public utility simultaneously files  
23 an application for approval of location of a transmission  
24 line pursuant to this section and an application for a  
25 certificate of public convenience and necessity pursuant to

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1 Subsection B of Section 62-9-1 NMSA 1978, the commission  
2 shall issue its order granting or denying the applications  
3 within nine months from the date the applications are filed  
4 with the commission; provided, however, that the commission  
5 may extend the time for granting approval an additional six  
6 months for good cause shown;

7 (2) if a public utility files an application  
8 for approval of location of a transmission line pursuant to  
9 this section after its application for a certificate of  
10 public convenience and necessity has been approved pursuant  
11 to Subsection B of Section 62-9-1 NMSA 1978, the commission  
12 shall issue its order granting or denying the application for  
13 approval of location of a transmission line within ninety  
14 days from the date the application is filed with the  
15 commission; and

16 (3) if a public utility files an application  
17 for approval of location of a transmission line pursuant to  
18 this section while its application for a certificate of  
19 public convenience and necessity is pending pursuant to  
20 Subsection B of Section 62-9-1 NMSA 1978, and the application  
21 for a certificate is subsequently approved, the commission  
22 shall issue its order granting or denying the application for  
23 approval of location of a transmission line within ninety  
24 days from the date the application for certificate of public  
25 convenience and necessity is approved.

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1           K. Failure to issue its order approving or  
2 denying an application filed pursuant to this section within  
3 [six months] the time periods set forth in Subsection J of  
4 this section is deemed to be approval of the application;  
5 provided, however, that the commission may extend the time  
6 for granting approval for a transmission line that is subject  
7 to this section for an additional [~~ten~~] nine months upon  
8 finding that the additional time is necessary to determine if  
9 the proposed location of the line will unduly impair  
10 important environmental values.

11           L. In determining if the proposed location of the  
12 transmission line will unduly impair important environmental  
13 values, the commission may consider the following factors;

14                   (1) existing plans of the state, local  
15 government and private entities for other developments at or  
16 in the vicinity of the proposed location;

17                   (2) fish, wildlife and plant life;

18                   (3) noise emission levels and interference  
19 with communication signals;

20                   (4) the proposed availability of the  
21 location to the public for recreational purposes, consistent  
22 with safety considerations and regulations;

23                   (5) existing scenic areas, historic,  
24 cultural or religious sites and structures or archaeological  
25 sites at or in the vicinity of the proposed location; and

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1                   (6) additional factors that require  
2                   consideration under applicable federal and state laws  
3                   pertaining to the location."

4                   Section 3. EFFECTIVE DATE.--The effective date of the  
5                   provisions of this act is July 1, 2005.

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